**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

Criminal Appeal No.567-SB of 2000

Date of Decision: May 23, 2007

Subeg Singh

...Appellant

**VERSUS**

State of Punjab

...Respondent

**CORAM: HON'BLE MR.JUSTICE RANJIT SINGH**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**Present:** Mr.S.S.Siao, Advocate,
Amicus Curiae for the appellant.

Mr.N.K.Saghi, Addl.A.G.Punjab,
for the State.

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***RANJIT SINGH, J.***

The appellant, who stands convicted for an offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called the “Act”) and sentenced to suffer ten years rigorous imprisonment with fine of Rs.one lac, has filed this appeal. He is also further sentenced to undergo rigorous imprisonment for

one year in case of default of payment of fine.

The facts, in brief, are that in the vicinity of village Jakhepal, the police party saw the appellant covering bags lying on the right side of the track of the drain with the black coloured polythene sheet. One open bag was also found lying nearby. Appellant was apprehended on the basis of suspicion. The police party joined one Sukhdev Singh as an independent witness. ASI Massa Singh apprised the appellant that he suspected that the bags were containing poppy-husk and as such desired to carry out the search. ASI also gave him an offer for being searched in the presence of a Magistrate or Gazetted Officer. The appellant reposed confidence in the ASI Massa Singh, who then uncovered the bags, which were found to be ten in number and were containing poppy-husk. The open bag lying nearby was also found containing poppy-husk. All the bags were numbered 1 to 11. Samples were drawn from each bag. On weighment, ten bags were found to be containing 35 kgs. each, whereas the eleventh bag contained 15 kgs. of poppy-husk. The parcels were sealed with the impression `MS' and the seal after use was handed over to ASI Pal Singh. Case property alongwith the polythene sheet and plastic container were taken in possession vide memo Exh.PC. Personal search of the appellant led to recovery of Rs.140/- and memo Exh.P3 in this regard was prepared and thumb marked by the appellant. On the basis of a ruqa sent, the FIR was registered. The case property alongwith the accused was produced before Inspector Baldev Singh, SHO of the Police Station. The case property was then deposited with the MHC of the Police Station. The eleven samples sent for analysis showed that it was

poppy head. The appellant was accordingly put to trial.

When confronted with the incriminating evidence and the material, the appellant denied the allegations and pleaded false implication. The appellant also brought out that he was picked up from the house of his sister and the recovery falsely planted on him. He examined Constable Jaswinder Singh of Police Station, Sunam and Constable Balwinder Singh from the office of Senior Superintendent of Police to show that ASI Massa Singh had been prosecuted for an offence arising out of FIR No.158 of 3.11.1993 under Section 15 of the Act.

Mr.S.S.Siao, the counsel appearing for the appellant has raised number of pleas to impugn the findings and the sentence awarded to the appellant. He would first submit that the prosecution could not establish if the appellant was in conscious possession of the contraband. He also submits that no written offer was made to the appellant at the time of recovery. Sukhdev Singh independent witness was not produced by the prosecution and he was also not produced before the Station House Officer, which would show that recovery is doubtful and may indicate false implication of the appellant. The counsel has also made a grievance that the contraband recovered was not produced before the Illaqa Magistrate and also that the investigation was not done to find out the owner of the poppy-husk. He has referred to the case of ***Bikkar Singh Versus State of Punjab, 2006(3) RCC 197*** in support of his submission that the appellant could not be said to be in conscious possession of the recovery, which was from a field. He then refers to the case of ***Harchand Versus State of Rajasthan, 2007(1) RCR***

***(Criminal) 356*** to say that a conviction can be set-aside where the police officer, who was complainant himself, had investigated the case. Reliance is also placed on the case of ***Ram Kumar Singh Versus State of Rajasthan, 1994(2) Crimes 277*** to urge that the officer, who was concerned in recovery, could not have taken up the investigation and it ought to have been done by some independent officer.

Mr.N.K.Sanghi, Addl.Advocate General, Punjab, on the other hand, has stated that the case of the prosecution is established by the sufficient evidence on record and the so called infirmities, as pointed out by the counsel for the appellant, cannot lead to any benefit to the appellant. As observed by the trial court, any officer of the rank of ASI and above have been authorised to conduct search. The objection taken in this regard was that ASI Massa Singh was holding the officiating rank of ASI. During his cross-examination, Constable Balwinder Singh, had to concede that Massa Singh had been given regular rank of ASI. The evidence of ASI Massa Singh, otherwise also, showed that he gave an option to the appellant for being searched either before the Illaqa Magistrate or the Gazetted Officer. The counsel for the appellant was too technical in saying that the offer for search was made before Gazetted Officer or Illaqa Magistrate, whereas it should have been before Illaqa Magistrate or Gazetted Officer. It was rightly observed by the trial court that the provisions of Section 50 of the Act would not be attracted in this case as it was not a case of personal search. The appellant was found covering the bags with tarpaulin and was so noticed by the various witnesses. It cannot, thus, be said that he was not in conscious

possession of this contraband recovered. The submission made by the counsel for the appellant that report of the Chemical Examiner showed it to be poppy head instead of being a poppy-husk, would also be immaterial and cannot lead to any benefit to the appellant. The submission that the evidence of appellant being in conscious possession was not put to the appellant, is not borne from the record. This aspect relating to the appellant being in conscious possession was put to the appellant and hence this submission of the counsel cannot be accepted. Even if ASI Massa Singh is alleged to have been involved under the case of N.D.P.S.Act, it would not render him ineligible to perform his duties as a police officer as he would otherwise face any consequences arising out of the offence alleged against him. This is not connected with the present offence in any manner. The assertion that the sample was sent with a delay of 18 days and, thus, there could be a possibility of a tampering etc. can also not be accepted because the seal was found intact when received by the Forensic Lab.

Accordingly, none of the grounds raised by the counsel for the appellant would justify interference in the order of conviction and the award of sentence, which is supported by sufficient evidence on record. The counsel for the appellant has not been able to substantiate the infirmities, so pointed out by him and hence the conviction and the sentence awarded to the appellant does not call for any interference.

The appeal is accordingly dismissed.

May 23, 2007 ( RANJIT SINGH )
ramesh JUDGE